

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 30 OF 2004

1. Dhanpal Appa Bhanuse
2. Balu Dhanpal Bhanuse
3. Bharat Dhanpal Bhanuse
4. Pandu Dhanpal Bhanuse

... Appellants

V/s

The State of Maharashtra

... Respondent

Mr. P.P. Hudlikar with G.M. Savagave for the appellants.

Mr. V.B.K. Deshmukh, A.P.P. for the respondent.

**CORAM: V.G. PALSHIKAR &
SMT. NISHITA MHATRE, JJ.**

DATED: 11TH DECEMBER, 2006.

ORAL JUDGMENT (PER SMT. MHATRE, J.):

1. The four accused who have preferred the present appeal have been convicted and sentenced under Section 302 of the Indian Penal Code by the Ad-hoc additional Sessions Judge, Kolhapur. They have been found guilty of having murdered Laxman Kondiba Gangadhar, a resident of village Umalwad, Tal. Shirol, Dist. Kolhapur.

2. The case of the prosecution is that the victim, Laxman had a dispute with the accused who were his neighbours regarding an open plot of land near their

houses. Laxman and the accused arrived at a settlement with the assistance of the police regarding that plot of land, about 5 or 6 months prior to his death. On the fateful day, Laxman returned home at noon from his saloon when he noticed the wife of accused No.1 weeding the plot which came to her family's share after the settlement. Laxman questioned her actions, when she abused him in obscene language. Laxman's daughter-in-law took him into the house and requested him not to talk to the wife of accused No.1. After lunch, Laxman left the house, informing his daughters-in-law that he was going to the village. Soon thereafter, one Mangal Gaikwad came running to inform Laxman's daughters-in-law that accused No.1 and his sons were beating Laxman on the road. The ladies rushed to the spot where they saw the accused assaulting their father-in-law with fist blows and kicks. Accused No.4, who was carrying a stick, dealt blows on the face and head of Laxman with the stick. Laxman collapsed with bleeding injuries. One Rama Mane, the son-in-law of Laxman informed the police of the incident. The police arrived at the scene of offence and admitted Laxman to Sangli Civil Hospital, after which a complaint was lodged against the accused. A crime was registered against the accused for offences punishable under Sections 326, 323 and 504 read with 34 of the Indian

Penal Code. The requisite panchanamas were drawn up and the accused were arrested. The stick used by accused No.4 was recovered at his instance and was seized. Laxman succumbed to the injuries sustained by him on 1.12.2001 at about 4.30 pm. An additional charge was levied against the accused under Section 302 of the Indian Penal Code. The accused was prosecuted and tried by the Ad-hoc Additional Sessions Judge, Kolhapur.

3. The prosecution has relied on the eye witness accounts of the daughters-in-law of the victim and of Mangal, their neighbour. The prosecution has also led evidence of the medical officers from Sangli Civil Hospital and the police officers involved in investigating the crime.

4. PW-1 and PW-2 are the panch witnesses who have proved the spot panchanama and the recovery of a stick at the instance of accused No.4, respectively. According to PW-2, the stick was hidden by the accused on a loft in his residence.

5. PW-3 is the complainant Sajakka, who has witnessed the incident. She is the daughter-in-law of the deceased Laxman. She has spoken about the dispute between her family and that of the accused. She has

also stated that the dispute was settled through the intervention of the police and other villagers about 5 to 6 months prior to the incident. However, certain skirmishes arose on a regular basis between the two families. She has narrated the incident of her father-in-law questioning the wife of the accused No.1 while she was weeding the plot and the fact that she had abused her father-in-law. She has also spoken about her father-in-law leaving the house after lunch at about 1.00 pm. She then had stated that she and her sister-in-law were cleaning the utensils in front of their house. Mangal, their neighbour rushed there informing that accused No.1 and his sons were assaulting their father-in-law. She states that, she and her sister-in-law rushed to the spot, followed by Mangal. She saw accused Nos. 1, 2 and 3 assaulting Laxman with sticks and kicks; accused No.4 was wielding a bamboo stick and assaulting Laxman on his face and head with the stick. Laxman collapsed and the accused left the scene of offence, abusing him. She has deposed that Laxman became unconscious and that he had sustained wounds on his nose and near his left eye. She has mentioned that other persons from the village had gathered at the spot including the two persons she has named. She then went to her brother-in-law, Rama Mane's house and informed him about the incident. He came to

the spot and then informed the police. According to this witness, Laxman was initially taken to Jaisingpur where no doctor was available. They were advised to shift him to Sangli Civil Hospital. After Laxman was administered medical aid in Sangli Civil Hospital, PW-3 lodged the F.I.R. with the police. In the cross-examination, the accused has first tried to elicit the information regarding the topography of the scene of offence and the two houses of the accused and the victim. This witness has mentioned the location of her house, Mangal's house juxtaposed with the residence of the accused. The accused had endeavoured to establish that PW-3 was not an eye witness to the incident. However, she has adhered to the facts that she had stated in her deposition in the examination-in-chief. This witness has admitted, however, that the family prevented the doctor who was treating Laxman from obtaining a C.T. scan of the victim and accepted the responsibility for doing so. A perusal of the evidence of this witness and the complaint indicate that there are no material omissions or contradictions in her evidence. There are no improvements from what she has stated in her complaint.

6. PW-4, Mangal has been examined to corroborate the evidence of the complainant. She has stated that, on

the fateful day, while she was returning after fetching the water, she saw accused No.4 and the victim quarrelling. She has also stated that when she proceeded towards her house, she saw PW-3 and her sister-in-law cleaning the utensils in front of their house. She informed these women of the quarrel between their father-in-law and accused No.4 who was armed with a stick. She has spoken about all three of them running towards the scene of offence when she noticed accused No.4 striking the victim on his head with a stick. She has mentioned that the victim had a bleeding injury on the head and nose. According to this witness, accused No.4 left the scene of offence, taking his stick with him. Laxman fell down unconscious. This witness however has not mentioned anything about the presence of accused Nos. 1 to 3. Her deposition has not been shaken by the cross-examination. PW-4, Mangal has corroborated the testimony of PW-3. She has witnessed the quarrel between the victim and accused No.4. She has spoken about informing PW-3 and Rekha, about the altercation. This witness has stated that she saw accused No.4 assaulting the victim with a stick. She has spoken of the presence of PW-5 besides others, at the spot.

7. PW-5 is a neighbour of the victim. She has

mentioned that, on 30.11.2001 she had noticed accused Nos. 2, 3 and 4 proceeding from their house; accused No.4 was armed with a stick. She has also spoken about Laxman lying injured on that spot. This witness has named PW-3, her sister-in-law, Rekha and PW-4 as being present at the spot. She saw PW-3 enter the house of Rama Mane to inform him about the incident. In the cross-examination, she admitted that she reached the spot after the victim was beaten by the accused. However, she had noticed accused No.4 carrying a stick with him, returning to his house alongwith accused Nos. 2 and 3. This witness has not said anything about accused No.1.

8. Rama Mane has been examined as PW-6. He has spoken about being informed of the incident by PW-3. He has described the injuries sustained by his father-in-law, the deceased. He has also spoken about the presence of PW-4, Rekha and PW-5, Kusum at the spot when he arrived. He has admitted that he has no knowledge about the incident as he has not come to know of it through PW-3.

9. PW-7 was a member of the Grampanchayat. He has spoken about the panchayat and villagers resolving the dispute between the accused and the deceased with the help of police.

10. PW-11 is the medical officer who examined the victim when he was admitted to hospital. This witness has described the injuries sustained by the victim. He has opined that the injuries sustained by the victim was due to a hard and blunt object, such as, a stick. However, according to this witness, some of the injuries sustained by the victim were possible due to a fall. PW-14 is the medical officer who was on duty at the Sangli Civil Hospital when the victim was admitted. He has spoken about having advised the victim's family to have a C.T. scan done for the victim and the victim's family having refused the same.

11. PW-8 is the investigating officer who carried out the initial investigation. PW-9 is the police constable who removed the victim to hospital. PW-10 is the P.S.I. who carried out the investigation. He has deposed regarding the recovery of stick at the instance of accused No.4. PW-12 is the constable who recorded the station diary entry when PW-6 Rama Mane informed him about the victim being assaulted. PW-13 has also carried out the investigations of the crime.

12. The prosecution, through the evidence on record, has established that the death of the victim was

homicidal in nature. The post-mortem examination indicates that the death occurred due to intracerebral haemorrhage. The victim had suffered several injuries including a fracture of his nasal bone, contusions near the eye and abrasions over the occipital region and contusion over the chest. The internal injuries sustained include fracture of the frontal bones, congestion and blood clots in the brain and fracture of the ribs. All these injuries were sustained because of the fist blows and kicks directed at the victim by accused Nos. 1, 2 and 3. Accused No.4 was wielding the stick, according to the eye witness accounts. He has assaulted the victim on his face and head. The injury on the eye and on head of the victim as seen from the medical evidence on record corroborates the eye witness accounts.

13. The Sessions Court has convicted all the accused under Section 302 of the Indian Penal Code. However, from a perusal of the evidence, we find that the role attributed to accused Nos. 1 to 3 is that they assaulted the victim with fist blows and kicks. In our opinion, therefore, they would be guilty of the offence punishable under Section 323 and not 302 of the Indian Penal Code as held by the trial Court.

14. In the case of accused No.4, although he is guilty of culpable homicide, it would not amount to murder. There was no doubt a previous enmity between the accused and the victim, however, it is obvious that the accused No.4 had no intention to till the victim. Therefore, although the accused No.4 had the knowledge that the assault with the stick could lead to the victim's death, he had no intention to kill the victim. In our opinion, therefore, accused No.4 cannot be held guilty under Section 302 but under Section 304 Part II of the Indian Penal Code.

15. The conviction and sentence of the accused under Section 302 of the Indian Penal Code is set aside. Accused Nos. 1 to 3 are convicted under Section 323. They shall suffer a sentence to the extent already undergone by them. They were in custody for more than one month during the trial. The accused No.4 is convicted under Section 304 Part II of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for five years.

16. In the result, the appeal is partly allowed.

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